

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
NO. 7:10-CR-114-BO


TIMOTHY LAMONT McMILLAN
Petitioner/Movant
v.
UNITED STATES OF AMERICA,
Respondent.

ORDER

This matter is before the Court on petitioner Timothy McMillan's motion for a certificate of appealability. Petitioner appears to request a certificate of appealability for a motion filed under 18 U.S.C. § 3582(c)(2). To date, the Court has not ruled on a § 3582(c) motion filed by Mr. McMillan nor is a certificate of appealability necessary to appeal the denial of any § 3582(c) motion. *See, e.g., United States v. Legree*, 205 F.3d 724, 727 (4th Cir. 2000). Accordingly, his motion [DE 70] is DENIED AS MOOT.

Moreover, even if the Court were to construe the instant motion as a request for a certificate of appealability on Mr. McMillan's motion to vacate pursuant to 28 U.S.C. § 2255, the Court has already denied a certificate of appealability with respect to petitioner's 2255 motion [DE 46]. The Fourth Circuit Court of Appeals has affirmed this Court's decision in an opinion dated November 24, 2015. [DE 63]. Accordingly, any motion for a certificate of appealability for a § 2255 also is DENIED AS MOOT.

SO ORDERED, this 20 day of January, 2016.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE